ON05964

F92-23

THE ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

DISCUSSION PAPER

"SCHOOL BOARDS AND TEACHERS COLLECTIVE NEGOTIATIONS ACT"

(BILL 100)

MAY, 1992

ACKNOWLEDGEMENTS

The Association thanks the following individuals for their contributions to the preparation of this document:

Bill 100 Task Force Members

Helena Nielsen, Trustee, Scarborough Board of Education, Task Force Chair (Central East Region)

John Castle, Trustee, Brant County Board of Education (Southern Region)

Sue Currie, Superintendent of Employee Services, Halton Board of Education (Central West Region)

Ron Prescott, Assistant Superintendent of Business, Lanark County Board of Education (Eastern Region)

Bob Tomlinson, Trustee, Sault Ste. Marie Board of Education (Northern Region)

Arlene Wright, Trustee, Grey County Board of Education (Western Region)

Staff Resource

A. Janet Beer, Director of Labour Relations and Research, OPSBA
Carla Garbas, Research Officer, OPSBA

Legal Counsel

Bruce Stewart, Hicks Morley Hamilton Stewart Storie
Barry Brown, Hicks Morley Hamilton Stewart Storie

93-00627/

TABLE OF CONTENTS

CONTENT	PAGE NO.
Preamble	
Establishment of the Task Force	1
Terms of Reference	1
Issues Referred to the Task Force	2
How to use the Discussion Paper	3
Introduction	
The History of the School Boards and Teachers Collective Negotiations Act	4
The Education Relations Commission	5
Current Processes Under Bill 100	7
Section I - Responsibility for Collective Bargaining	13
Section II - Fact Finding	27
Section III - Strikes and Lock-Outs	33
Section IV - Principals in the Bargaining Unit	44
Section V - Legislated Time Frame and Process	50
Section VI - Duty to Bargain in Good Faith	54
Section VII - Work to Rule	58
Section VIII- Final Offer Selection	61
Summary	63

PREAMBLE

On September 28, 1991, the Board of Directors of OPSBA approved the establishment of a task force to review the School Boards and Teachers Collective Negotiations Act (Bill 100) and related issues, as a result of resolutions passed at the 1991 Annual General Meeting and concerns raised by many member boards.

The task force was established with representation from the six OPSBA regions and included both trustees and administrators from large, medium and small boards of education. The mandate of this committee is two-fold. First, the task force was responsible for the identification, research, and development of a discussion paper on issues of concern under Bill 100 for member board consideration and response. Second, following the consultation process, the task force is responsible for the preparation of an OPSBA position to propose changes to the legislation to facilitate the collective bargaining process under the Act.

Terms of Reference

1. To develop a comprehensive position paper for consultation with member boards prior to finalizing and developing an OPSBA position of Bill 100 and related issues;

2. To develop a strategy to gain the appropriate provincial legislative changes, including providing to the Ministry of Education, proposals and options;

3. The Task Force may consider and make recommendations on any other matter relating to Bill 100 and related issues.

The following issues were referred to the task force for consideration:

- Provincial Bargaining
- Principals in the Bargaining Unit
- Teachers' Right to Strike
- Fact Finding

In addition, the task force has identified issues intended to facilitate the process of negotiations under Bill 100 and impact on collective bargaining for the purposes of this discussion paper:

- Legislated Time Frame and Process
- Final Offer Selection (for information)
- Duty to Bargaining In Good Faith (for information)
- Work to Rule (for information)

The following document is intended to explore and discuss the above-noted issues for member board consideration. Recommendations by the task force were based on consensus and may not reflect individual member views.

Who should respond?

OPSBA has prepared this Discussion Paper to circulate to all member public school boards seeking active participation and input in the review and development of an OPSBA position paper to enact changes to the School Boards and Teachers Collective Negotiations Act.

The consultation on this document includes:

- member public school boards
- individual school trustees and school board officials

Why respond?

OPSBA needs your input and views on the future process of negotiations under the School Boards and Teachers Collective Negotiations Act. Although Bill 100 establishes processes dealing in the area of Labour Relations, these processes cannot be dealt with in isolation of governance and educational finance issues.

The input from this consultation process will be used by OPSBA to:

1) develop a position paper to propose amendments to the School Boards and Teachers Collective Negotiations Act;

2) to examine and determine the implications of any amendments to the areas of governance and educational finance.

How to respond?

The discussion paper will identify the current processes under Bill 100, identify concerns raised, and explore possible future options to facilitate negotiations under Bill 100.

Each section will identify the advantages and disadvantages of proposed options. The task force has identified "committee recommendations" for your consideration and input and has developed a series of questions to assist in preparing your comments. In the opinion of the task force, none of the issues addressed in this document can be dealt with in isolation. Member boards are asked to consider all issues in conjunction with possible options.

When?

Comments must be forwarded to OPSBA by October 1, 1992. The OPSBA task force on Bill 100 and related issues will continue the work in the interim period, and therefore early input would greatly assist in the assessment of opinion and future analysis of the issues.

OPSBA can help.

If you require clarification of the content, please do not hesitate to contact the committee members or staff members, as noted on the front acknowledgements pages.

OPSBA and the Task Force members have prepared a presentation of the discussion paper to be presented at the Annual General Meeting of OPSBA in June, 1992.

OPSBA may schedule sessions in your region, perhaps to be organized in conjunction with regularly scheduled regional meetings. This will provide an opportunity for further input and participation.

INTRODUCTION

The History of Bill 100

During the mid-1960's, teachers in Ontario, as in most areas in North America, began demanding that collective agreements include non-salary issues such as pupil/teacher ratios and working conditions. "Industrial Relations in Elementary and Secondary Education: A System Transformed?" by Mr. Bryan M. Downie, identifies some factors which influenced the 1960's and early 1970's in teacher-board bargaining:

> "The most significant changes in education came, not in the 1980's, but in the period from the mid-1960's to the mid-1970's. A combination of circumstances provided an uncertain environment for teacher-board negotiations. The most important factors were: (1) a rapidly changing educational system; (2) changes in the composition and philosophy of the teaching profession, reflected in changing leadership and a developing professional militancy; (3) a social climate conducive to teacher militancy; (4) the formation of the county board system, which resulted in the consolidation of local boards into much larger units; and (5) ceilings on school board spending imposed by the Ministry of Education."

Not surprisingly, trustees were not prepared to include such issues as pupil/teacher ratios and working conditions in negotiations. Various versions of strikes began to occur more frequently. Such actions as mass resignations and pink listings became more common in school jurisdictions. Alternatively, the teacher federations from 1965 to the early 1970's changed from professional oriented bodies to tough-minded and highly resolved collective bargaining bodies. It became increasingly clear that the potential for conflict existed and the parties were indeed adversaries on some important issues.

What was missing during this time period was any form of dispute resolution. By 1973, following mass resignations and strikes in Metro Toronto, Windsor, Ottawa and other areas, it became clear that the government of Ontario would have to consider legislation governing the educational sector.

The School Boards and Teachers Collective Negotiations Act was established in 1975 as a unique piece of legislation and established that teachers in the Province of Ontario would have the right to bargaining collectively, the right to strike and open-scope negotiations. Boards of education acquired the right to lock out. Bill 100 created a series of unusual processes leading up to sanctions. Its primary intent was to:

1) encourage the parties to bargain;
2) prevent unnecessary strikes and lockouts and protect the public interest; and
3) inform the public and other interested parties of the nature of the dispute.

These objectives would be achieved through a complex, mandated process including timelines, and the establishment of fact finding. The legislation further established the Education Relations Commission to monitor and assist in the processes defined in the Act. Section 60 (1) of the School Boards and Teachers Collective Negotiations Act defines the mandate of the Education Relations Commission.

It is the duty of the Commission,

(a) to carry out the duties imposed on it by the Act and such other functions as may, in the opinion of the Commission, be necessary to carry out the intent and purpose of this Act;

(b) to maintain an awareness of negotiations between teachers and boards;

(c) to compile statistical information of the supply, distribution, professional activities and salaries of teachers;

(d) to provide such assistance to parties as may facilitate the making or renewing of agreements;

(e) to select and, where necessary, to train persons who may act as mediators, fact finders, arbitrators or selectors;

(f) to determine, at the request of either party or in the exercise of its discretion, whether or not either of the parties is or was negotiating in good faith and making every reasonable effort to make or renew an agreement;

(g) to determine the manner of conducting and to supervise votes by secret ballot pursuant to this Act; and

(h) to advise the Lieutenant Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out or closing of a school or schools will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out or closing of the school or schools.

For the purposes of its duties under the Act, the Education Relations Commission has passed a number of resolutions governing its proceedings and dealing with the carrying out of its duties, which are set out in the ERC's Policies, Procedures, and Forms Manual.

In 1980, with the release of the Matthews Commission Report, the Minister of Education received responses from all of the then trustee organizations, teacher federations, the Education Relations Commission and other interested groups concerning the 49 recommendations contained in the report. The Commission reviewed Bill 100 in its entirety, including those issues presented in this discussion paper. The results of the Matthews Commission Report and responses to it, resulted in very minor changes in the legislation.

The following document is intended to identify the mandated processes under Bill 100, identify areas of concern and explore possible alternatives to facilitate collective bargaining under the Act.

Current Processes Under Bill 100

It is necessary to review the current processes established under the School Boards and Teachers Collective Negotiations Act to clearly identify some of the concerns which will be addressed later in this document.

Please Note: The following is intended to summarize some of the requirements under the Act and is not all inclusive of the requirements of the parties.

Purpose of the Act

2. "The purpose of this Act is the furthering of harmonious relations between boards and teachers by providing for the making and renewing of agreements and by providing for the relations between boards and teachers in respect of agreements. R.S.O. 1980, c. 464, s.2"

3. "This Act applies to all collective negotiations between boards and teachers in respect of any terms or condition of employment put forward by either party for the purpose of making or renewing an agreement."

The School Boards and Teachers Collective Negotiations Act establishes a series of mandated processes for negotiations between boards and branch affiliates. **The Act is permissive** for either boards or branch affiliates to act jointly as a party by mutual agreement under section 4. (1) which states:

> "In negotiations and procedures under this Act to make or renew an agreement or agreements, two or more boards may act jointly as a party and two or more branch affiliates may act jointly as a party, where both the boards and branch affiliates involved so agree, to make or renew an agreement between the boards and the branch affiliates or to make or renew a separate agreement between each of the boards and a branch affiliate that represents teachers employed by the board."

An example of this provision of joint negotiations is common in the elementary panel where the Ontario Public School Teachers' Federation and the Federation of Women Teachers' Association of Ontario negotiate jointly with a board of education. Boards of education, on the other hand, have negotiated on the basis of a single employer.

Mandated Processes

The following is a summary of the mandated processes for negotiations which currently exist under Bill 100. A chart identifying the timelines is attached for your reference. (See page 12)

Term of Agreement

The Act is specific in its requirements of the term of an agreement. Section 50 states: Every agreement shall,

(a) provide for a term of operation of not less than one year;
(b) state that it is effective on and after the lst day of September in the year in which it is to come into operation; and
(c) state that it expires on the 31st day of August in the year in which it ceases to operate.

Negotiations

With the expiration of agreements on August 31st, the Act makes provisions to renew a collective agreement based on the following timelines:

1. Notice is given by either party to make or renew an agreement in the month of January in the year in which the agreement expires.

2. The parties meet within thirty (30) days from the date on which the notice was received.

3. At any time during negotiations, the parties may agree to:

   a) request the Commission to assign a person to assist the parties;
   b) request the Commission to appoint a fact finder;
   c) refer all matters remaining in dispute between them to an arbitrator or board of arbitration or a selector under Final Offer Selection as provided for under the Act.

4. Upon the appointment of a fact finder the parties shall give written notice within seven (7) days to the fact finder of all matters that the parties have agreed upon and all the matters remaining in dispute between the parties. Fact finder appointments are automatic after the expiry of the current collective agreement (August 31).

Duties of a Fact Finder

The Act outlines in Sections 20 and 21 the duties of Fact Finders and their role to assist the parties. The Act states:

20. (1) It is the duty of a fact finder to confer with the parties and to inquire into, ascertain and make a report setting out the matters agreed upon by the parties for inclusion in an agreement and the matters remaining in dispute between the parties.

    (2) A fact finder may, in his report, include his findings in respect of any matter that he considers relevant to the making of an agreement between the parties and recommend terms of settlement of the matters remaining in dispute between the parties.

21. In inquiring into and ascertaining the matters remaining in dispute between the parties, the fact finder may inquire into and consider any matter that the fact finder considers relevant to the making of an agreement between the parties including, without limiting the foregoing,

    (a) the conditions of employment in occupations outside the public teaching sector;

(b) the effect of geographic or other local factors on the terms and conditions of employment;

(c) the cost to the board of the proposal of either party;

(d) the interests and welfare of the public.

5. The fact finder shall submit his report to the Commission within thirty (30) days after the date of his appointment. A longer period of time may be agreed to between the Commission and the parties.

6. Fifteen (15) days following the release of the fact finding report to the parties, where the parties have not reached an agreement, the report is made public. A deferral of the release of the report of up to five (5) days may be granted at the request of the parties. During this period the parties are required to continue meeting.

7. After a minimum of fifteen (15) days following the release of the fact finding report several processes under the Act may begin.

(a) Negotiations continue with or without third party assistance.

(b) A supervised last offer vote by the teachers and a supervised strike vote may be taken by the teachers. It is not necessary, however, for the strike vote to be taken at the same time as the last offer vote. Often a strike vote will be taken at a later date.

(c) The parties retain the option to mutually agree to Voluntary Arbitration or Final Offer Selection.

8. Following a strike vote, the teachers must give at least five (5) days notice of their intent to impose sanctions. The earliest strike date is September lst at the expiration of the previous collective agreement.

9. Once a lawful strike takes place against a board, the board may lock-out or declare a state of lock-out. A Board can only lock-out after the last proposal of the branch affiliate regarding all matters agreed upon and all matters remaining in dispute between the parties, last received by the board, has been presented to a meeting of the board in public session.

10. Once a lawful strike takes place against a board, the board may close a school or schools where the board is of the opinion that,

(a) the safety of students may be endangered;
(b) the school building or the equipment or supplies therein may not be adequately protected during the strike; or
(c) the strike will substantially interfere with the operation of the school.

Definition of a Strike

The Act defines a strike as follows:

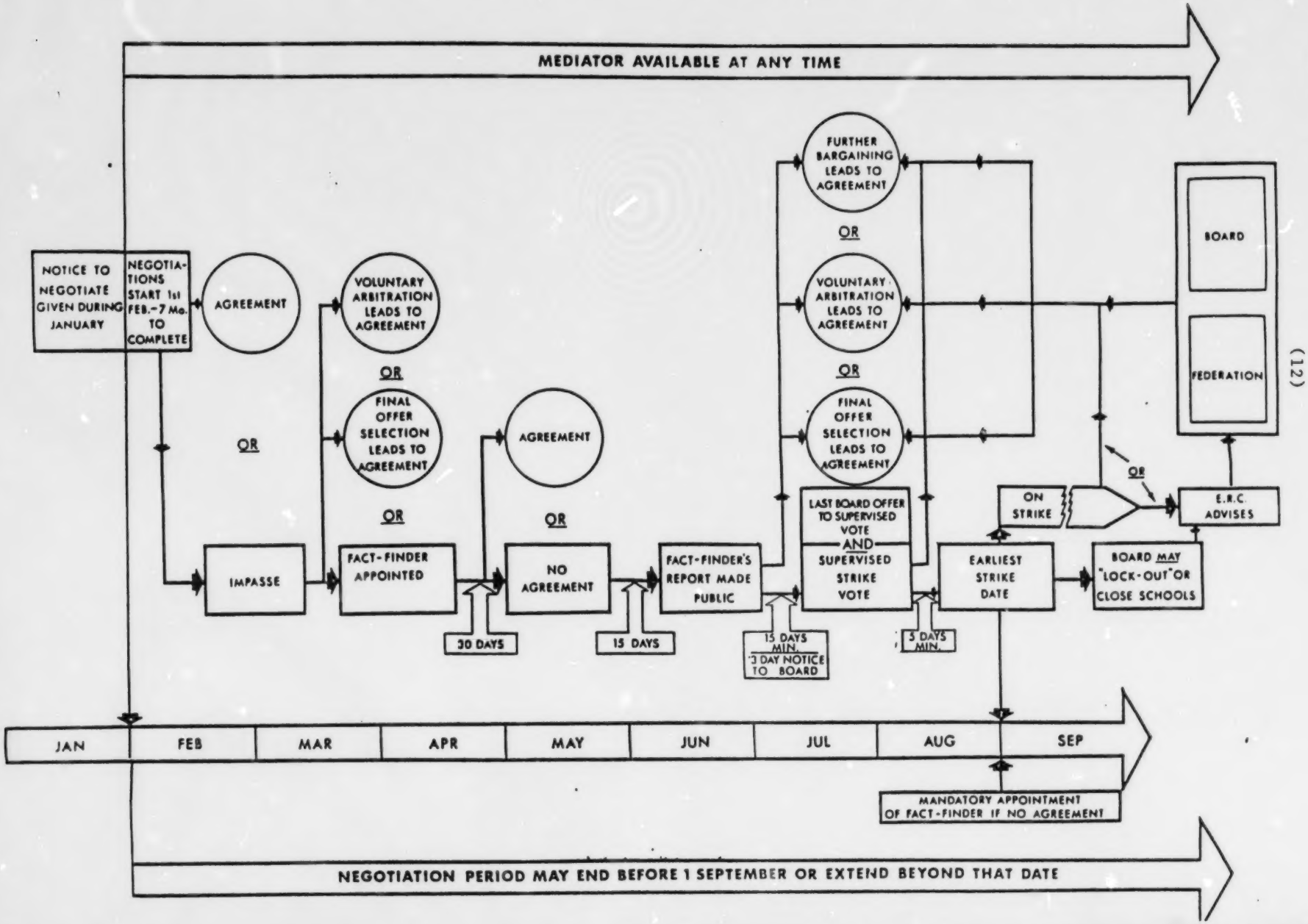
Sect. 1 (l) "strike" includes any action or activity by teachers in combination or in concert or in accordance with a common understanding that is designed to curtail, restrict, limit or interfere with the operation or functioning of a school program or school programs or of a school or schools including, without limiting the foregoing,

(i) withdrawal of services,
(ii) work to rule;
(iii) the giving of notice to terminate contracts of employment.

A further provision under the Act regarding the length of a strike or lock-out is Section 60. (1) (h) - "It is the duty of the Commission :

to advise the Lieutenant Governor in Council when in the opinion of the Commission, the continuance of a strike, lock-out or closing of a school or schools will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out or closing of the school or schools."

THE NEGOTIATION PROCESS



SECTION I

Responsibility for Collective Bargaining

One of the major issues which gave rise to the review of the School Boards and Teachers Collective Negotiations Act was to examine whether or not the collective bargaining system in Ontario should remain in its current format of negotiations on a local basis with local school board autonomy governing terms and conditions of employment or if some alternative model would better service the parties.

Of the other nine provinces, three (British Columbia, Alberta, Manitoba) have local teacher bargaining similar to Ontario; three (Saskatchewan, Quebec, Nova Scotia) have a two-tier, local/provincial mixed system; and three (New Brunswick, Prince Edward Island, Newfoundland) have a single-tier provincial system. (See chart on page 17 & 18)

Given the variations in formats among the provinces, one can conclude that virtually any bargaining system can be made to work.

The British Columbia School Trustees Association in an August, 1991 report to the Minister of Education, titled "Achieving a Better Teacher Bargaining System" made the following observations and conclusions concerning their views in achieving an effective collective bargaining system. It should be noted that in 1988 British Columbia adopted a system of collective bargaining similar to the Ontario model. It is this system which is currently being reviewed in British Columbia.

"Guiding Principles"

The design of a bargaining system for teachers very much depends on what the bargaining system is expected to achieve, and on which rights and principles it is important to respect and preserve.

Objective

1. **Bargaining should set fair compensation and working conditions for teachers, neither too high nor too low in comparison to other members of the B.C. labour force, and be sensitive to the law of supply and demand of teachers.**

2. **Bargaining should allow other important systems to function properly: systems of learning, financing, taxing, and professional development. Specifically, bargaining should not be asked to achieve, nor subject to interference in pursuit of, the objectives of these other systems.**

Rights and Principals

1. **Students have a right, through their school board representatives, to insist that their learning conditions are not unreasonably affected by collective bargaining.**

2. **People have a right to influence decisions affecting their lives and livelihood. Teachers have a right to collective bargaining.**

3. **Taxpayers, through their school boards, have a right to ensure that settlements are not excessive.**

4. **Dispute resolution for conflict between these rights must be based on a balance in power. It cannot strip employees of meaningful influence, nor strip taxpayers and students of meaningful safeguards.**

5. **Diversity of local circumstances must be accommodated.**

6. **The parties to the bargaining table must be accountable to those who elect them and to those who are affected by, and have to pay for, the bargaining decisions.**

7. **The bargaining process must have integrity. It must not be interfered with, unilaterally set aside or undone, nor allowed to invade unreasonably other functions."**

The task force, in its review of this issue, identified the following objective in its consideration of the responsibility for collective bargaining.

> The objective through collective bargaining is to achieve fair salary prices based on the market price and fair working conditions based on the learning needs of students and workloads for teachers that are comparable to work loads for others in society. If a process was free of barriers to set the price fairly, then the appropriate cost control systems are more appropriately finance, administration, and program decisions.

A review of various formats of bargaining indicates that Alberta and British Columbia under local bargaining have higher pupil-teacher ratios than Quebec and Saskatchewan under provincial bargaining. Although Ontario currently has a lower pupil/teacher ratio than the above-noted provinces, the format of bargaining does not appear to be the deciding factor determining working conditions. A similar review of salaries provides for the same conclusions.

The provincial government, in its 1992 announcements concerning transfer payments and general legislative grants, have required that boards of education make the same decisions concerning programs, educational services and the increase which it believes is acceptable to the local rate payer, as is the case in each year of the budget process. As a result of the economic situation in Ontario, this becomes a more difficult task over the next several years. The principles, however, remain the same.

The task force did not debate the merits of the government's decisions in 1992. In examining an appropriate bargaining system, one must consider that any system should be able to accommodate decisions in both "good" and "bad" economic times. The basic question should be, "does the process drive the conditions or do the conditions drive the process?"

The issues of educational finance and governance cannot be dealt with in isolation when considering alternatives to the current system of collective bargaining in Ontario. The task force has identified some of the concerns related to educational finance and governance in its review of each bargaining model.

The following bargaining models have been identified with a view to discussing the advantages and disadvantages of each. They are not intended to be all inclusive and are provided for consideration and debate by member boards. The task force considered these models on the basis of the guiding principles identified.

For the purposes of discussions, you are asked to consider the following question prior to the consideration of the various negotiating models.

1. Do you agree with the "Guiding Principles"? Why/Why not?

General Aspects of Teacher Collective Bargaining

Prov.	Type of Bargaining	Notice to Bargain	Commencement of Bargaining	Time Limit for Bargaining	Normal Expiry Date of Collective Agreement(s)
Nfld.	Provincial	Within 3 months preceding the expiry of the current agreement	Within 30 days of notice to bargain.	N/A	August 31
P.E.I.	Provincial	Within the period of 3 months and 14 calendar days, excluding July and August, preceding expiry of current agreement.*	Within 14 calendar days of notice to bargain.	When negotiations have continued for 45 calendar days and a conciliation officer is appointed on written request of either party or at the discretion of the Min. of Labour	August 31
N.S.	Provincial and Local	Within the 2 months preceding the expiry of the current agreement	Within 20 days of notice to bargain	N/A	July 31 (for Provincial Agreement)
N.B.	Provincial	Within the 2 months preceding the expiry of the current agreement mutually acceptable	Within 20 days of notice to bargain unless later date is agreed to.	45 days unless extension of the period is mutually agreed to.	August 31
Que.	Provincial	At least 8 days written notice of the commencement of negotiations is provided by either party; such notice may be given within 90 days of the expiry of the current agreement, unless another delay is provided for.**		N/A	December 31 (for provincial agreement)
Ont.	Local	Within the month of January in the year in which the current agreement expires.	Within 30 days of notice to bargain	N/A	August 31 (Sec. 50(c) Bill 100)

Prov.	Type of Bargaining	Notice to Bargain	Commencement of Bargaining	Time Limit for Bargaining	Normal Expiry Date of Collective Agreement(s)
Man.	Local	Between 90 and 30 days preceding the expiry of the current agreement, excluding July and August	Within 14 days of notice to bargain unless later date is mutually acceptable due to change in fiscal year)	N/A	December 31 (could change to June 30 after 1989)
Sask.	Provincial and local		Not later than 100 days before expiry of existing agreement (by September 22 for agreements expiring December 31).	N/A	December 31 (for Provincial Agreement)
Alta.	Local	Between 120 and 60 days preceding the expiry of the current agreement	Within 30 days of notice to bargain***	N/A	December 31 or August 31
B.C.	Local	Within 4 months **** preceding the expiry of the current agreement	Within 10 days of notice to bargain	N/A	June 30

* Prince Edward Island (as per Schools Act -- Regulations). (a) not later than 6 months (excluding July and August) preceding expiry of current agreement the parties meet to determine data and information that each should make available to the other; (b) Not later than 4 months (excluding July and August) preceding expiry of current agreement the parties meet to present and analyze the data and information that each has collected; (c) Prior to the commencement of formal negotiations, the parties attempt to resolve as many issues as possible through mutual consultation.

** Quebec (as per amendments to the Quebec Labour Code -- special Provisions Applicable to Public and Parapublic Sectors). (a) The negotiations stage begins 180 days before the expiry date of the collective agreement; (b) The bargaining agent for the certified association must present written proposals on all matters negotiated at the provincial level except salaries and salary scales not later than 150 days before the expiry date of the collective agreement; (c) Within 60 days of receipt of these proposals the management negotiating committee presents written counter-proposals on all matters negotiated at the provincial level except salaries and salary scales. Within 30 days of the publication of the report of the Institut de recherche et d'information (by November 30 of each year), both parties submit their proposals on salaries and salary scales.

*** Alberta (as per Bill 22). The parties shall exchange bargaining proposals within 15 days of their first meeting.

**** British Columbia If notice is not given by either party 90 days or more prior to the expiry of the agreement, both parties are deemed to have given notice 90 days prior to the expiry.

Local Autonomy

Format: Status Quo

Boards of Education negotiate as single employers with their branch affiliates.

Advantages:

* Locally determined terms and conditions of employment.
* Representative of local conditions and public interest.
* Direct liaison between education system and public.
* Reflects the direct accountability of Trustees for education.
* Direct accessibility to political decision-makers by the public.
* Better labour relations and employee relations occur when the bargaining parties know each other and work together.

Disadvantages:

* Limited resources.
* Settlement trends influence local conditions.
* Difficult for an individual board to initiate a major change in agreements.

Regional Collaboration

Format: Maintain local autonomy concerning the negotiation process and decision making on terms and conditions of employment. Joint consultation committees within the region, to communicate, support, and assist boards in negotiations with the branch affiliates.

The current collective bargaining committees in six OPSBA regions are reflective of this process.

Advantages:

* Improved communication.
* Networking and communication support among neighbouring boards.
* Sharing of innovative ideas.
* Recognition of settlement implication to regional boards.
* Sharing of resources and a united approach to developing proposals and positions. Cost saving.
* May assist individual board to initiate a major change in agreements.
* Better labour relations and employee relations occur when the bargaining parties know each other and work together.
* Format of collaboration provides for an opportunity to be proactive vs. no negotiating agenda and being reactive to union proposals.

Disadvantages:

* The task force did not identify any disadvantages.

Joint Regional Negotiation

Format: Boards of education, under Section 4. (1) of the School Boards and Teachers Collective Negotiations Act, negotiate jointly with one or more regional boards. This process would require an amendment to Bill 100 to provide for the adjudication by the Education Relations Commission pertaining to the appropriateness of bargaining units and joint bargaining.

Advantages:

* Voluntary where deemed appropriate.
* Subject to adjudication, the format is currently permissive under the Act.
* Resorts to sanctions present greater risk to all participants.

Disadvantages:

* Reduces local accountability for decisions.
* Difficult to properly aline boards and collective agreement provisions.
* May create protracted negotiations to achieve common solutions suitable at the local level.
* Would deal with local issues at arms length.
* Would not reduce, and may increase the need for additional financial resources.
* May create restrictive legislation. e.g. no opting out of process.
* Resorts to sanctions present greater risk to all participants.

Bi-Level Negotiations

Format: The process would identify certain issues which would be dealt with in some form of provincial bargaining model and other issues which would be dealt with at the local level. e.g. Province of Quebec (Bill 37) provides for negotiating salaries and major monetary issues provincially and other issues locally. (see page 23). The local level can only levy 6% from the rate payers and any additional funding can be obtained by holding a referendum.

Advantages:

* Some reduction in resources.
* Resorts to sanctions present greater risk to all participants.

Disadvantages:

* Limited trustee involvement on certain issues.
* Eliminates local accountability for decisions.
* Resorts to sanctions present greater risk to all participants.
* No bargaining strengths at local level if monetary issues are removed.
* Responsibility for educational finance would be removed regarding provincial control of monetary issues.
* Less flexibility to determine educational requirements based on local conditions.
* No control of sanctions at the local level.
* No recognition of local economic conditions.
* Substantial difficulties will be encountered to determine what should be bargained centrally and what should be bargained locally.
* Transfer of accountability for a major portion of board finances will alter the responsibility of governance at the local level.

An example of a similar format exists in Ontario under the Municipality of Metropolitan Toronto Act which joins eight Metro Area Boards together to bargain salaries, benefits and staffing.

SCHEDULE A

LIST OF THE MATTERS NEGOTIATED AND APPROVED AT THE LOCAL OR REGIONAL LEVEL IN THE EDUCATION SECTOR

II -- SCHOOL BOARD SECTOR

In respect of the Teaching Staff

1- Recognition of local parties
2- Communication and posting of union notices
3- Use of school board premises for union purposes
4- Documentation
5- Union prerogatives
6- Union representatives
7- Deduction of union dues or equivalent dues
8- Mechanisms of participation
9- Engagement (subject to employment security, priorities of employment and tenure acquisition)
10- Personal record
11- Dismissal and non re-engagement
12- Resignation and breach of contract
13- Regulations concerning absences
14- Leaves without pay (except those provided for parental leaves, for participation in public affairs and for union activities)
15- Leaves for activities relating to education
16- Distribution of work days in the calendar year
17- Hygiene and safety
18- Payment of salary
19- Travel expenses
20- Assignment and transfer procedure
21- Distribution of duties and responsibilities among the teachers of a school board
22- Distribution of working hours
23- Supply teaching, groups meetings and meetings with parents
24- Supervision of arrival and movement of pupils not included in teaching task
25- Civil liability
26- Professional improvement (subject to allocated amounts and provincial improvement programs)
27- Grievance and arbitration (only as to matters negotiated locally)
28- Savings fund

Provincially by Trustee and Teacher Organizations

Format: The process would negotiate a central agreement, binding on all boards of education by a provincial committee representing trustees and a provincial committee representing branch affiliates.

Advantages:

* In the event of sanctions, every board affected at the same time.
* Reduction in human resources at the local level.

Disadvantages:

* Limited trustee involvement in the process.
* Eliminates local accountability for decisions.
* Responsibility for educational finance may be removed with provincial control of monetary issues.
* Less flexibility to determine educational requirements based on local conditions.
* No control of sanctions at the local level.
* No recognition of local economic conditions.
* Transfer of accountability for a major portion of board finances will alter the responsibility of governance at the local level.
* In the event of sanctions, every board affected at the same time.

Provincially by Government and Teacher Organizations

Format: The process would negotiate a central agreement, binding on all boards of education by the government representing trustees and a provincial committee representing branch affiliates.

Advantages:

* In the event of sanctions, every board affected at the same time.
* No negotiating resources required at the local level.

Disadvantages:

* Assumes Government will "represent trustees" or "local boards of education".
* In the event of sanctions, every board affected at the same time.
* No trustee involvement in the process.
* Eliminates local accountability for decisions.
* Responsibility for educational finance may be removed with provincial control of issues.
* No flexibility to determine educational requirements based on local conditions.
* No control of sanctions at the local level.
* No recognition of local economic conditions.
* Transfer of accountability for board finances will alter the responsibility of governance at the local level.

Responsibility for Collective Bargaining

Committee Recommendation:

That Local Autonomy be retained with Regional Collaboration being utilized by member boards. Joint Regional Negotiation, which is permissive, may be considered where deemed appropriate.

QUESTIONS:

1. **Which model do you believe will most effectively address the "guiding principles" for a negotiating process?**
2. **Provide any additional "advantages" or "disadvantages" to the various negotiating models which your board believes are appropriate.**
3. **Is there an additional model the task force should consider?**

SECTION II

Fact Finding

As previously stated in the report, the Act outlines in Sections 20 and 21 the duties of fact finders and their role to assist the parties. The Act states:

20. (1) It is the duty of a fact finder to confer with the parties and to inquire into, ascertain and make a report setting out the matters agreed upon by the parties for inclusion in an agreement and the matters remaining in dispute between the parties.

(2) A fact finder may, in his report, include his findings in respect of any matter that he considers relevant to the making of an agreement between the parties and recommend terms of settlement of the matters remaining in dispute between the parties.

21. In inquiring into and ascertaining the matters remaining in dispute between the parties, the fact finder may inquire into and consider any matter that the fact finder considers relevant to the making of an agreement between the parties including, without limiting the foregoing,

(a) the conditions of employment in occupations outside the public teaching sector;
(b) the effect of geographic or other local factors on the terms and conditions of employment;
(c) the cost to the board of the proposal of either party;
(d) the interests and welfare of the public.

The original theory of fact finding working properly under Bill 100 required that the following elements were present in the negotiating process.

* **negotiations with relatively few, well defined issues;**
* **one party established a position, which if made public, would have been embarrassing;**
* **the local media is paying close attention to the process.**

These circumstances have been relatively unusual for fact finding over the last several years. The task force has identified issues which have raised concerns about fact finding in its review of options.

Options for Fact Finding:

1. Status Quo

Advantages:

* Fact finding has assisted in the process of finalizing negotiations in some circumstances.

* Enhances communications between the parties in some circumstances.

* May lead the parties to a settlement on difficult issues.

* May narrow the range on some issues and the elimination of other issues in dispute.

* Recommendations may provide a face-saving device for the parties and identify unreasonable or unrealistic demands being posed. This is true for both management and labour.

* Recommendations may provide both parties with room to maneuvre where labour and management largely agree on what needs to be done but where there are inadequate funds to accomplish initiatives.

* Some fact finding reports in the latter part of 1991-92 process have recognized the provisions of the Act of the conditions of employment in occupations outside the public teaching sector, the effect of geographic or other local factors on the terms and conditions of employment, the cost to the board of the proposal of either party and the interests and welfare of the public.

Disadvantages:

* No public pressure because the local media and the public have not placed any emphasis on the process and are usually unaware of the issues until sanctions are likely.

* The parties knowingly hold back concessions during negotiations because they are aware that they may have to go through fact finding. Mediation may be affected in a similar manner and fact finding becomes a process to extract just a little bit more than mediation has already provided.

* Over time, the parties become less and less likely to incorporate fact finding recommendations into their agreements. The theory that any dispute-resolution mechanism tends to lose its effectiveness over time applies.

* Fact finding stops the negotiations progress in that from the date of the fact finder's appointment until the release of the report, no negotiations usually take place and valuable time is wasted.

* The contents and recommendations of fact finding reports are predictable, and therefore, have diminished impact on the parties' negotiations.

* The recommendations of fact finders tend to be systematically biased towards one of the parties.

2. Elimination of fact finding from Bill 100.

Advantages:

* The process would be removed for those jurisdictions which appear not to be benefiting from it.

* Resources would not be required to prepare for the process.

Disadvantages:

* No third-party involvement which is not binding on the parties to review the issues remaining in dispute.

* No access to the process for jurisdictions where fact finding has been useful.

* Some alternative would be likely. In all other provinces, either conciliation or fact finding currently exists as an independent third party process which is not binding on the parties.

Possible Alternative to the Elimination of Fact Finding

Replace fact finding with mediation as the condition precedent to acquiring the right to strike and/or lock-out. The E.R.C. would acquire the right to appoint a fact finder, if deemed necessary, due to a strike or lock-out date. The strike or lock-out deadline would have to be delayed to allow the fact finding process to operate.

This would make fact finding much more effective because it would put the issues causing an impasse under public scrutiny, at a time when the public would be keenly interested in the dispute.

3. Altering the current process - timelines and procedures.

By the identification of timelines under Bill 100, as they relate to protracted negotiations, and the purpose of fact finding as it was envisioned by the drafters of Bill 100, alter the current provisions to make fact finding more effective.

Possible Alternative to Current Provisions:

* Establish timelines which would place fact finding later in the process.

* Establish fact finding as a public forum where the fact finder would facilitate the process in order to define the issues agreed to and issues remaining in dispute.

In conjunction with revised timelines as identified on page 52 the following option could be considered:

- Fact finding available by a specific date (e.g. May 15) and mandatory at a later date (e.g. June 1). Mediation available prior, during and after the process.

- Fact finder appointed and meeting held within 15 days with notice of public meeting (date, time and place).

- Parties present positions both in written form to fact finder and oral presentations made at meeting.

- Fact finder would act as a moderator to ensure that the parties provide rationale on their positions only. The fact finder would prepare a written report, without recommendations, for ERC and government information of issues.

Advantages:

* Respects the true intent of fact finding as a process which recognizes the provisions of the Act which are the conditions of employment in occupations outside the public teaching sector, the effect of geographic or other local factors on the terms and conditions of employment, the cost to the board of the proposal of either party and the interests and welfare of the public.

* Allows for a narrowing of issues which a fact finder would need to address.

* Allows for the maximum amount of time for the parties to deal with issues in dispute.

* Ensures that the public are fully briefed on the issues remaining in dispute in the event of sanctions and those issues which have already been agreed to through the negotiations process.

* Places the process at the local level which puts greater emphasis on local conditions.

* Mediation prior to this process may provide more meaningful movement on the outstanding issues by the parties.

Disadvantages:

* Changes the process for those jurisdictions that have benefited from the process.

* Additional third party intervention through fact finding and recommendations from that party have complicated the process and added to the settlement timeline. Recommendations from both a mediator and fact finder have been inconsistent.

Committee Recommendation:

That an alternative process to fact finding be established to meet the original intent and increase public awareness of the issues in dispute.

QUESTIONS:

1. **Do you agree/disagree that fact finding continues to assist the parties in reaching a settlement? Why?**

2. **Do you agree/disagree that the elimination of fact finding, with an identified alternative is appropriate? Why?**

3. **Do you agree/disagree that a public fact finding process would assist the parties and the public in its understanding of the issues remaining in dispute and lead towards settlement? Why?**

4. **Are there specific issues which need to be addressed (e.g. timing) if a revised fact finding process is to be effective?**

SECTION III
Strikes and Lock-Outs

Two issues are raised in this review of Bill 100 in the area of strikes and lock-outs. First, the task force has been mandated to examine the issue of teachers right to strike. Second, if strikes remain legal under Bill 100, are the established processes suitable, and provide the appropriate mechanism for dispute resolution. The following section examines both issues.

Sanctions

The following provides a summary of sanctions which have occurred in public boards of education since the establishment of Bill 100. Bill 100 provides for the following provision in the event of a strike. Section 60. (1) (h) of the Act provides for the following provision in the duties of the Education Relations Commission:

"to advise the Lieutenant Governor in Council when, in the opinion of the Commission, the continuance of a strike, lock-out or closing of a school or schools will place in jeopardy the successful completion of courses of study by the students affected by the strike, lock-out or closing of the school or schools."

Since the enactment of Bill 100 in 1975, Ontario has experienced the following sanctions in the public education sector:

School Year	# of Boards involved in sanctions	Average Inst. Days Lost	Average Days Excluding Work to Rule
1975-76	Secondary (6)	42.7	28.2
1976-77	Secondary (2)	34.0	12.0
1977-78	Secondary (5)	42.0	21.4
1978-79	Secondary (3)	23.7	21.3
1979-80	Elementary (2)	18.0	17.5
	Secondary (3)	45.0	31.7
1980-81	Secondary (3)	39.9	38.3
1981-82	Secondary (2)	25.5	25.5
1982-83	Secondary (1)	7.0	7.0
1983-84	----------		
1984-85	Secondary (2)	34.5	29.5
1985-86	Secondary (3)	34.3	33.3
1986-87	Secondary (1)	33.0	33.0
1987-88	Elementary (1)	18.0	18.0
1988-89	Secondary (1)	8.5	8.5
1989-90	Secondary (2)	32.0	18.5
	Elementary (1)	26.0	26.0
1990-91	Secondary (3)	6.3	6.3
	Elementary (1)	28.0	28.0

Source: Education Relations Commission - November 21, 1991.

Public boards of education have experienced forty-two (42) sanctions on the part of local affiliates from 1975 to 1991. Of these forty-two (42) sanctions, either by full withdrawal or by work to rule action, Section 60 (1) (h) of Bill 100 has been utilized seven (7) times as a result of the full withdrawal of service. Five (5) cases were in the first year Bill 100 was enacted.

From 1975 to 1989 there were 2,206 sets of negotiations (excluding 1982-84 during wage controls) in the province. 2,152 (97.6%) resulted in negotiated settlements with 53 (2.4%) strikes occurring either in the form of work to rule or full withdrawal of services.

Therefore, in the context of the number of collective agreements which have been negotiated over this sixteen year period, sanctions have been minimal. The right to strike, however, places significant pressure on both parties to come to a satisfactory resolution of issues to avoid sanctions. In order to examine the merits of "teachers' right to strike" it is necessary to examine what alternatives are available should this right be removed.

Manitoba and Prince Edward Island currently do not have a strike option for dispute resolution. Compulsory binding arbitration is the final stage of the bargaining process in these two provinces. Quebec and Nova Scotia have the right to strike at the provincial level, however not at the local level. Saskatchewan has the right to strike by inference only since this aspect of the collective bargaining procedures is not specifically referred to in legislation. (see pages 38 and 39)

In all provinces where strikes are legal, prerequisites apply under the collective bargaining process. Examples of prerequisites include no collective agreement currently in effect, notice to bargaining must have been served, a vote by secret ballot in favour of a strike by union members must have taken place and the parties have not mutually agreed to voluntary

binding arbitration. Compulsory conciliation prior to a declaration of strike applies in Nova Scotia, Newfoundland, New Brunswick, Ontario (fact finding) and Saskatchewan. The number of days subsequent to an unacceptable conciliation report or its equivalent (fact finding) varies from seven to fifteen days. What is common among all provinces is an extensive procedure for collective bargaining prior to any sanctions being possible. This is similar in all provinces whether they negotiate at the provincial, bi-level, or local level. Those provinces without strike provisions or limited strike provisions have compulsory arbitration imposed.

Options for Sanctions:

1. **Status Quo**

Advantages:

* Places pressure on the parties to reach a settlement;
* Determines the strength of the issues outstanding;
* Increases public awareness of the issues;
* No binding arbitration;
* Finalizes the negotiations process.

Disadvantages:

* Effect of a strike on students, families and the community;
* Disruption of services;
* Damages student/teacher relationship;
* Loss of respect.

2. **Remove the provision for Sanctions**

Advantages:

* Maintains the continuation of programs.

Disadvantages:

* Binding arbitration would likely finalize the process;
* Reduces the pressure on the parties to resolve issues;
* Changes focus on public awareness and budget processes;
* Would not identify the strength of issues and may increase third party intervention.

Committee Recommendation:

That teachers retain the "right to strike" and that compulsory binding arbitration is not a viable option.

QUESTION:

1. **Do you agree/disagree with retaining the "right to strike" provision of Bill 100? Why?**

2. **Should there be any special programs or assignments which should be excluded from the "right to strike" provision. (e.g. Special Education or remedial services)? Why?**

Provincial Dispute Resolution

Prov.	Conciliation Institution(s) Involved	Mediation Institution(s) Involved	Arbitration Institution(s) Involved	Arbitration Voluntary or Compulsory	Strikes Legal or Illegal
Nfld.	1.Conciliation officer 2.Conciliation Board		Arbitration Board	Voluntary	Legal
P.E.I.	Conciliation Officer		Arbitration Board	Compulsory	Illegal
N.S.	1.Conciliation Officer 2.Conciliation Board	Mediation Officer	Arbitration Board	Voluntary at provincial level Compulsory at local level	Legal at provincial Illegal at Local level
N.B.	1.Conciliation Officer 2.Conciliation Board		Public Service Arbitration Tribunal	Voluntary	Legal
Que.	Conciliation Officer re clauses negotiated at the local or regional level	Mediator or Board of Mediation or Public Interest Group re clauses negotiated at provincial level. except salaries and salary scales	Mediator-Arbitrator re clauses negotiated at the local or regional level	Compulsory at the local/ regional level (Mediator/Arbitrator)	Legal at prov level except salaries/ salary scales for second and third year Coll.Agreement Illegal at local and regional level
Ont.	Fact finder	Mediator	1.Single Arbitrator 2.Arbitration Board 3.Final Offer Selector	Voluntary	Legal
Man.	Conciliation Officer		Arbitration Board	Compulsory	Illegal

Prov.	Conciliation Institution(s) Involved	Mediation Institution(s) Involved	Arbitration Institution(s) Involved	Arbitration Voluntary or Compulsory	Strikes Legal or Illegal
Sask.	Conciliation Board	1.Mediator 2.Mediation Team	Arbitration Board	Compulsory if mediation-arb. option selected* Voluntary if conciliation-strike option selected*	Legal at prov. and local levels conciliation-strike option selected but illegal if mediation-arb. option selected
Alta.	Disputes Inquiry Board	Mediator	Single Arbitrator or Arbitration Board	Voluntary	Legal
B.C.	1.Fact Finder 2.Public Interest Inquiry Board	Mediation Officer	1.Single Arbitrator 2.Arbitration Board 3.Mediator-Arbitrator 4.Final Offer Selector 5.Special Mediator***	Voluntary**	Legal

* By September 21 for collective agreements expiring on December 31 (i.e. 101 days prior to the expiry date) the parties must select whether mediation-arbitration or conciliation-strike option will be invoked to resolve an impasse.

** Where the Commissioner of the Industrial Relations Council is directed to resolve a dispute by the Legislative Assembly or the Lieutenant Governor in Council, one of the options available to him/her is the appointment of a special mediator. Note that the pertinent sections of Bill 19 (i.e., (137.97, 137.98, 137.99) have not, as yet been proclaimed into law.

*** If section 137.97 (3)(b)(iv) of Bill 19 were proclaimed into law, arbitration would become compulsory since the Commissioner would have the authority to order the parties to arbitration, when directed to resolve a dispute by the Legislative Assembly or the Lieutenant Governor in Council.

Source: Canadian Teachers' Federation, Economic Service Bulletin, May 1990.

Lock-out and School Closing Provisions

The second issue relating to Bill 100 and "Strikes and Lock-outs" is that if strikes remain legal under Bill 100, are the established processes suitable, and provide the appropriate mechanism for dispute resolution?

The concern raised with the task force by member boards is the inability of boards of education to influence the timelines for sanctions. The Act currently provides that boards of education can only "lock-out" (Section 68) when:

(1) Where a lawful strike takes place against a board, the board may lock-out or declare a state of lock-out to exist against all members, other than principals or vice-principals, of the branch affiliate that represents teachers engaged in the strike.

(2) No board shall lock out or declare a state of lock-out to exist or close a school or schools unless and until the proposal of the branch affiliate in respect of all matters agreed upon by the parties and in respect of all matters remaining in dispute between the parties last received by the board has been presented to a meeting of the board in public session.

(3) Except as provided in subsection (1), a board shall not lock out a teacher.

As a result of these requirements, boards of education cannot take any action which would, in their opinion, influence the timing of the negotiation process and that the Act does not provide for parallel rights with respect to strikes and lock-outs. An example of this would be branch affiliates exerting pressure by sanctions occurring just prior to examinations for OAC students.

The Act further provides under Section 10 (3), boards of education cannot alter working conditions of an expired agreement (August 31) until:

Where notice has been given of desire to negotiate to make or renew an agreement, the terms and conditions of the agreement, other than a term or condition that prevents a strike, that was in force at the time of giving the notice shall not be altered until either,

(a) an agreement or a new agreement comes into force or the agreement is renewed, as the case may be; or

(b) subject to subsection 27 (2) and subsection 68 (5), sixty days have elapsed after the Commission has made public the report of the fact finder as provided in section 26,

whichever first occurs. R.S.O. 1980, c. 464, s. 10.

(Note: the calculation of the sixty day period must be in accordance with the Education Relations Commission Policies and Procedures.)

The statistical data concerning sanctions would suggest that the parties prefer to conclude their own settlements rather than have one imposed by third party intervention. The continued right to strike, however, under the legislation should be balanced by equalizing the ability of boards of education to resist a strike or balance "each party's ability to resist the other's demands".

Several questions must be considered in the area of a "balance of rights" between the parties concerning sanctions. Specifically, the right of boards of education to lock-out on the same basis as provided for under the legislation for teachers and their right to strike should be accomodated. Further, the right of boards of education to alter terms of employment on the same basis as teachers right to strike, including the consideration of compensation when sanctions such as "work to rule" are imposed, should be included. The right to resist a strike by resorting to various alternatives is a key management right.

Under the current legislation, boards of education must lock-out all of the teachers in the bargaining unit regardless of the sanctions imposed. A provision for partial lock-out should also be considered in cases of rotating strikes or so-called "work to rule". Therefore, the process must consider

that the prerequisites for imposing sanctions should be the same for both parties.

Options for "Board of Education Right to Lock Out":

1. **Status Quo**

Advantages:

* Boards of education can lock-out or close schools after specific provisions under the Act are followed.

Disadvantages:

* Does not provide for "balanced" rights of the parties. Boards cannot lock-out on the same basis as the teachers right to strike;
* Boards of education cannot resist a strike by imposing sanctions;
* No process available to boards of education to deal with sanctions other than full withdrawal of services.

2. **In conjunction with revised timelines, amend Bill 100 to provide for sanctions at a specific date (e.g. September 1). If sanctions are not imposed, the last offer of the board of education shall form the basis of a renewed collective agreement between the parties.**

Advantages:

* Provides for a specific timeline for sanctions to occur;
* Establishes a management right to resist a strike;
* Balanced rights for each party to take or resist a strike;
* Deals with the issue of protracted negotiations.

3. **Amend Bill 100 to provide for boards of education to lock-out and modify terms of employment on the same basis as the branch affiliates right to strike and partial lock-outs in the event of work to rule.**

Advantages:

* Shared control over process and sanctions;
* Balanced rights for each party;
* Rights for boards of education to deal with work to rule situations;
* Establishes a management right to resist a strike.

Committee Recommendation

That the Act provide for "balanced rights". Therefore, either Option 2. or 3. may be considered.

That boards should acquire the right to modify the terms of employment on the same basis as the teachers right to strike.

2. **In conjunction with revised timelines, amend Bill 100 to provide for sanctions at a specific date (e.g. September 1). If sanctions are not imposed, the last offer of the board of education shall form the basis of a renewed collective agreement between the parties.**

3. **Amend Bill 100 to provide for boards of education to lock-out and modify terms of employment on the same basis as the branch affiliates right to strike and partial lock-outs in the event of work to rule.**

QUESTIONS:

1. **Do you agree/disagree that the current provisions relating to strikes and lock-outs should be revised? Why?**

2. **Do you agree/disagree with the committee recommendation/option concerning strikes and lock-outs? Why?**

SECTION IV

Principals in the Bargaining Unit

Boards of education have, for many years, expressed concerns regarding the inclusion of principals in the bargaining unit. Bill 100 currently provides for an exclusion of principals and vice-principals from participation in sanctions. (see pages 48 and 49 for provincial managerial exclusions)

In boards of education, the final decision-making authority in key functions relating to personnel administration, collective bargaining, and to impose disciplinary action is by the Trustees on a board of education. However, the decision is often based on the recommendations of front-line managers and executive level staff. In the case of teachers, this responsibility is placed on the principal. In addition, principals are, to a large extent, responsible for the administration of collective agreements.

Some boards of education have expressed concerns about the unionization of principals over the last sixteen years. This situation has created a substantial conflict at times such as strikes and discipline imposition due to duties owed to boards of education and the public and the obligations as members of the union. More recently, this concern is further emphasized with the teacher federations actively increasing membership by certification of other areas of school board employees such as clerical, custodial, teacher assistants, etc.

Trustees must have access to the best thoughts of all managers in order to maximize available resources, enhance the use of personnel according to need and to create less bureaucratized decision making groups. Critical free flow of information on management/leadership strategies cannot be curtailed or limited. Management personnel must be able to perform in this way, on behalf of the board and not on behalf of unionized personnel.

As boards of education consider issues such as site-based decision making and restructuring of education and finance, they must examine what implications exist with principals who continue to be members of unions.

Boards of education must further consider what its future needs are when considering the management function of principals in the context of the organization.

Options for Principals in the Bargaining Units

1. **Status Quo**

Advantages:

* Current provisions of collective agreements would continue;
* Facilitates provisions when "reverting" to another position through the staffing process;
* Maintains status quo for jurisdictions not experiencing difficulties;
* Creates a more bureaucratized decision making group.

Disadvantages:

* Union affiliation by management representatives;
* May be affecting the administration of collective agreements;
* Management of other groups such as clerical, custodial, teaching assistant personnel who become certified;
* May not facilitate future board decisions (e.g. site-based decision making).

2. Principals in a Separate Bargaining Unit

The Ontario Labour Relations Act reforms is currently examining the certification of managerial personnel in all sectors. The same advantages and disadvantages, as identified above, would remain under a separate bargaining unit or any union affiliation. Further, union affiliation does not address the issues of supervisory personnel and a management exclusion for those who make effective recommendations.

3. Principals Removed From the Federations:

Advantages:

* No union affiliation by management representatives making effective recommendations;
* Administration of collective agreements free from union influence;
* Management of other groups such as clerical, custodial, teaching assistant personnel free from union influence;
* May facilitate future board decisions (e.g. site-based decision making).

Disadvantages:

* Provisions of collective agreements would not continue; some alternative would be required;
* Provisions to facilitate "reverting" to another position through the staffing process would be required;
* Would change status quo for jurisdictions not experiencing difficulties;
* Creates less bureaucratized decision making groups.

Committee Recommendation:

That options be pursued to address the issue of principals in the bargaining units.

QUESTIONS:

1. **Do you agree that the management function of principals is influenced by a union affiliation?**

2. **What future roles of principals might be influenced by a union affiliation?**

3. **What future direction of boards of education might address the issue of school administration?**

4. **What effect has the expanded certification of members (clerical, teacher assistants, etc.) with the provincial teacher federations had on the role and responsibilities of principals?**

Legislative Managerial Exclusions for Teacher Bargaining Units

Province	Legislative Managerial Exclusion
British Columbia	The British Columbia School Act defines "teachers" as those persons "appointed or employed by a board to give tuition or instruction or to provide other education services ... but does not include a person appointed by a board as a superintendent of schools or assistant superintendent of schools" or administrative officer (School Act -- Section 1). Sec. 44 of Bill 20, the Teaching Profession Act, amended Sec. 1(1) of the School Act by adding the following definition: "administrative officer" means a person employed or appointed by a board as a director of instruction, a principal or a vice-principal.
Alberta	The Labour Relations Code (Bill 22-LRC) excludes persons from coverage who exercise managerial functions or who are employed in a labour relations capacity. However, the Alberta School Act (ASA) provides that inclusion of "administrative, supervisory or consultative" positions in collective bargaining may be negotiated between the parties. (LRC -- Section 1 (1) (i); ASA --Section 77 (2)).
Saskatchewan	The Education Relations Board may include or exclude persons as "teachers" for the purpose of collective bargaining, based on their duties and responsibilities, and the criteria for inclusion/exclusion developed in provincial bargaining. (Education Act -- Section 261)
Manitoba	The bargaining unit includes all teachers (defined as holders of certificates and employed by a board) except "superintendents, assistant superintendents, and deputy superintendents". (Public Schools Act -- Section 97 (1)).
Ontario	The bargaining unit includes all "teachers" (those holding teaching certificates and employed by a board) except those appointed for less than one month, teacher-training instructors, and "supervisory officers", as defined in Section 1 (65) of the Education Act (The School Boards and Teachers Collective Negotiations Act -- Section 1 (m)). These are "directors of education" and similar officials defined by regulation. Principals and vice-principals are expressly made members of "branch affiliates" (the equivalent of local associations) but are also expressly prohibited from taking part in strikes..
Quebec	The bargaining unit includes "employees" except those who, in the opinion of the labour commissioner, are "employed as a manager, superintendent, foreman, or representative of the employer in his relations with employees". (Quebec Labour Code -- Section 1(1).
New Brunswick	The bargaining unit comprises all employees save those "employed in a managerial or confidential capacity". Examples of excluded personnel include: (i) a person who has executive duties and responsibilities in relation to the development and administration of government programs; (ii) whose duties include those of a personnel administrator or who has duties that cause him to be directly involved in the process of collective bargaining on behalf of the employer;

(iii) who is required by reason of his duties and responsibilities to deal formally on behalf of the employer with the grievance process provided for in this Act;

(iv) who is employed in a position confidential to any person in the preceding paragraphs;

(v) a person who is not otherwise described in the preceding paragraphs but who in the opinion of the Board should not be included in a bargaining unit by reason of his duties and responsibilities to the employer.

(Public Service Labour Relations Act -- Section 1)

Nova Scotia — For purposes of the bargaining unit, "teacher" means a person holding a teacher's certificate or a vocational teacher's permit pursuant to the Education Act of Nova Scotia but does not include a person in charge of a school system appointed by a school board, be he a superintendent, supervisor of schools or principal and, in the case of a regional vocational school, does not include the principal thereof (Teachers' Collective Bargaining Act -- Section 2(t)). Nevertheless, a member of management is entitled to all the benefits negotiated by the Union for a teacher in the school system of which he is in charge (supra, Section 13).

Prince Edward Island — The bargaining unit comprises "instructional personnel", which means teachers employed by regional school boards and such other persons as the Minister of Education designates but excludes superintendents and assistant superintendents. (School Act Regulations, Part 1, Division G, No. 1.52 (f)).

Newfoundland — All teachers comprise the bargaining unit, except that the Newfoundland Labour Relations Board may exclude persons who in its opinion are "part of management". (Newfoundland Teacher (Collective Bargaining) Act -- Section 5(3)).

Source: Canadian Teachers Federation, Economic Service Bulletin, May 1990.

SECTION V

Legislated Time Frame and Process

Previously, in this document (Current Process Under Bill 100) the legislated time frame and process for negotiations is outlined. Some of the concern of many member boards have been the length of time required to complete negotiations, resources required during protracted negotiations, and the lack of influence by boards of education to expedite the process, despite the fact that collective agreements expire on August 31st.

The issues which appear to influence the protracted negotiations are as follows:

1. The Act currently provides for "notice to bargaining" to be provided in the month of January and a legal requirement to meet within 30 days of notice being given. Therefore, by legislative requirements, it is feasible that a first meeting not occur prior to March 1. Alternatively, there is no requirement to exchange negotiating briefs at any particular meeting or have proposals available at a specific time. In actual fact, many boards do not receive the unions' negotiating proposals until well into the month of April or May (4-5 months into the process).

2. In some cases, the parties have excepted the months of July and August as being excluded from the negotiations process and the teachers will not normally meet during this time frame.

3. Fact finding, as it is now provided for under the legislation, would appear to influence any meaningful movement during actual negotiations until this process is complete. Fact finders are being faced with an increasing number of issues remaining in dispute over the last several years. In 1991, some reports had as many as 80+ issues outstanding between the parties.

4. The current provisions for strike and lock-out would appear to favour strike action, on the part of the teachers, three to four months into the school year or later. **In 1989-90**, sanctions occurred in public boards of education on the following basis:

December 22, 1989 to January 23, 1990
December 22, 1989 to January 24, 1990
April 19 to May 27, 1990
May 3 to June 29, 1990
May 11 to September 3, 1990

In 1990-91:
October 9 to 22, 1990
October 15 to November 23, 1990
March 6 to 25, 1990

5. By practise, there is an assumed right to retroactive salary adjustment to September 1 by both parties despite the actual date of settlement which removes some of the incentive to settle.

It would appear to be a commonly held view, among member boards, that the timelines for the negotiations process must be modified in order to provide more active negotiations earlier in the process and provide for the settlement of agreements prior to September 1st, wherever possible. In addition, the parties should be in a position to invoke their (balanced)* rights at the expiry of the collective agreement.

*See Section III - Strikes and Lock-outs

Options for Timelines and Processes Under the Act:

1. Status Quo

Advantages:

* No public pressure on the parties until well into the school year;
* Permits more time for third party assistance.

Disadvantages:

* Increases required resources due to protracted negotiations;
* Negotiations may not begin until late April/early May;
* The process ceases during the summer months;
* No incentive for meaningful movement early in the process;
* No incentive to settle prior to the expiry of the collective agreement;
* No control over the timing of sanctions;
* No set time frame to increase public awareness prior to notification of sanctions.

Committee Recommendation:

In conjunction with other issues identified in this discussion paper (e.g. Sanctions - "balanced rights", and fact-finding), the task force has considered the following time frame as a possible alternative to difficulties currently being experienced under Bill 100.

Notice to Bargain	**by January 15**
Requirement to Meet and Exchange Negotiating Proposals	**within 15 days**
Mediation Available to the Parties	**by April 1**
Fact Finding (new format)	**available June 1**
Last Offer/Strike Vote	**by last week of June**
Negotiations to continue (if required)	**July and August**
Option of Sanctions to both parties	**September 1**

QUESTIONS:

1. **Do you agree/disagree that a revised time frame would assist the parties under the legislation? Why? Why not?**

SECTION VI
Duty to Bargain in Good Faith

Several issues and questions have been raised concerning the issue of "duty to bargain in good faith". The following is provided for clarification of the current systems established under Bill 100 and requirements of the parties.

Bill 100 applies to negotiations, proceedings and agreements between the boards and the branch affiliates. The parties to collective bargaining negotiations are charged with the responsibility to engage in good faith negotiations. Specifically, the Act requires that the parties shall meet within thirty days from the giving of notice (to negotiate) and they shall negotiate in good faith and make every reasonable effort to make an agreement or renew the agreement as the case requires.

Bill 100 requires the Education Relations Commission ("the ERC") to determine, at the request of either party, whether or not either of the parties is or was failing to satisfy this obligation to bargain in good faith. While the ERC has developed a limited body of jurisprudence relating to good faith bargaining, it has typically followed the jurisprudence of the Ontario Labour Relations Board in determining and defining the concept of the duty to bargain in good faith.

When speaking of the meaning of good faith bargaining, it is important to note that differing circumstances will require differing responses to meet the obligation of good faith bargaining. However, some general conclusions can be drawn to provide guidance to parties engaging in collective bargaining disputes.

The obligation to meet within thirty days is self evident. However, the requirement to negotiate in good faith and make every reasonable effort to make an agreement imposes an obligation on the parties to participate actively in the deliberations so as to demonstrate an intention to find a basis for agreement.

The nature of participation demands an open mind in both a sincere desire and a sincere effort to reach common ground or agreement. The duty to bargain in good faith has been described as encompassing two requirements. Firstly, there is a duty to meet and bargain in good faith - a requirement that takes account of the parties' motives and intentions. Secondly, there is the requirement to make every reasonable effort to make a collective agreement. That requirement may be offended even where a party does not deliberately intend to make no agreement or seek to impede rational bargaining. It would be enough if the conduct, albeit unintentional, falls short of the requirement to make every reasonable effort. In essence, the parties must fulfill certain behavioural requirements in the negotiating process.

It must be realized that this obligation does not compel either party to agree to any particular proposal or to make any particular concession. Generally, the ERC, in assessing whether the obligation has been met will not be concerned with the substantive terms about which the parties bargain. It is not the intent of the ERC to regulate the substantive solutions existing between the parties as long as the parties demonstrate a serious intention to address their differences. Furthermore, the duty to bargain in good faith does not of necessity require the parties to reach an agreement. Failure to reach an agreement, or bargaining to an impasse, does not automatically signify that the parties have not negotiated in good faith. The impasse may result from a genuine irreconcilability of positions, or from a need to test assumptions about the other party's resources or resolve in the use of economic conflict. Of course, there will be times when an impasse will result because one of the parties does not wish to reach agreement and has not bargained in good faith.

The terms "hard bargaining" and "surface bargaining" have been used to distinguish between those proposals which may or may not infer bad faith bargaining. "Surface bargaining" describes a going through the motions, or a preservation of the surface indications of bargaining without the intent of concluding a collective agreement. However, "hard bargaining" recognizes that the parties are expected to act in their individual self interest and, in so

doing, are entitled to take firm positions which may be unacceptable to the other side. Consequently the mere tendering of a proposal which is unacceptable or even predictably unacceptable is not sufficient, standing alone, to allow the ERC to draw an inference of "surface bargaining".

Since it is not usual for parties to announce, in express terms, their refusal to negotiate in good faith, the ERC will examine, and will be prepared to draw inferences from their actual conduct during the course of negotiations. As is evident, it is the process of negotiating and not necessarily the substance of positions which is under scrutiny. While, it is not out of the question that substantive proposals may provide inferences as to a party's "sincere desire and sincere effort to reach common ground or agreement", the ERC will generally not be concerned with substantive terms or proposals. The ERC reasons that to do so would invite disappointed negotiators in every case to file complaints of bad faith bargaining. The ERC is concerned with the process of bargaining and not the content of proposals tabled.

Bill 100 requires negotiations to be conducted between the board's and the appropriate representative of the teachers and provides that the branch affiliate (or branch affiliates where joint bargaining is agreed upon) is the appropriate party to the negotiations. Accordingly, as the statutory representative, the branch affiliate is the party with whom the board must deal in conducting its negotiations; it cannot bargain directly or indirectly with its employees and to do so will be a violation of Bill 100. It should also be noted that there is no restriction to be placed on the right of the parties to obtain assistance in negotiations. This Bill 100 right means that it is not appropriate for one party to object to the individuals who represent the other party across the bargaining table. Where such objections amount to a refusal to bargain with that party who has obtained representation pursuant to Bill 100, that conduct in of itself will constitute a failure to bargain in good faith.

Since a party's representative bargains on behalf of that party under statutory authority, the corresponding party may not disparage or discredit the statutory representative in the eyes of its members with a view to undermining its ability to negotiate for them. The board may, of course, make its position known to the pubic and to its own employees. However, it may not seek to persuade the teachers to exert pressure on their representatives to submit to the will of their employer, or create the impression of the employer rather than the statutory representative is the true spokesperson for teacher interest.

(Source: Bruce H. Stewart, Hicks Morley Hamilton Stewart Storie, Barristers & Solicitors)

SECTION VII
Work To Rule

The following is provided for clarification of the current systems established under Bill 100 and requirements of the parties regarding "work to rule".

There is considerable misconception among trustees and boards as to teacher and branch affiliate rights and board rights during a work to rule strike. In a work to rule strike, the branch affiliate normally sets out certain rules or conditions under which the members should work. However, the expression "work to rule" strike means that the teachers will work precisely to the rules established by the employer and not go beyond what the employer or, in this case, the board requires. Therefore, it is critical that boards determine what the rules are so that compliance with those rules does not cause a board any significant problem.

The important distinction between a normal strike and a work to rule strike is that under the latter, teachers continue to be paid whereas in the other forms of strike s.68(5) of Bill 100 prohibits a teacher being paid. Thus, if teachers follow the board rules, they will be paid; if they don't because they are acting in concert in a legal strike, Bill 100 prohibits the payment of their salary.

In one case the teachers followed the rules established by OSSTF rather than the rules established by the board. Arbitrator Owen Shime in response to the board's grievance stated that a work to rule is:

> "a term of art with a meaning that is well understood in collective bargaining or in an industrial relations context and the term means that employees are to strictly observe the rules with a view to disrupting the employer's operation. **But the term does not mean that employees may set their own rules or unilaterally alter the employer's rules.**"

Consequently, a board has considerable latitude to prescribe a wide range of activities and responsibilities which teachers must perform. These activities and responsibilities could include but are not limited to: classroom instruction, remedial responsibilities, supervision, communications with parents, attendance at staff and departmental meetings and supervision of curriculum-based field trips.

Indeed, a board can define within its rules the scope of the program encompassing activities that teachers have traditionally undertaken "voluntarily" in providing services under their contracts of employment. This would include the provision of what the Minister defines in OSIS as Co-instructional Programs (formerly called Extra-Curricular Programs).

The Education Act and Regulations empower boards to prescribe in great detail what teachers are to do. The difficulty is that most boards do not utilize their powers and hence, when a work to rule strike occurs, there is no requirement in the absence of board action which requires teachers to do what everyone has taken for granted is their responsibility.

In other words, the enemy, as Walt Kelly observed, is us. Boards can, by clear direction, through board administration require teachers to perform work notwithstanding that a work to rule strike has been called. For example, branch affiliates in a "work to rule" strike commonly direct that teachers shall only be in their school 15 minutes before classes normally begin or until 15 minutes after classes normally end. The board may direct a broader time frame but often does not.

As a further example, branch affiliates often state that teachers shall only teach classes and carry out supervisory duties as per the teacher's previously assigned timetable. Supervisory duties can be issued at any time.

If a teacher does not perform the duties required by the board and it is part of a strike, the teacher cannot be disciplined but rather the Act provides that the board is prohibited from paying the teacher. However, if the

teacher is not going contrary to board direction, but is working in compliance with the existing board rules but does less than is expected of him/her, the strike is properly called a work to rule strike and the prohibition in s.68(5) of Bill 100 is not operative.

(Source: Bruce H. Stewart, Hicks Morley Hamilton Stewart Storie, Barristers & Solicitors)

SECTION VIII
Final Offer Selection

The following is provided for clarification of the current systems established under Bill 100 and requirements of the parties regarding "final offer selection".

Bill 100 presently provides for the voluntary use of a form of compulsory arbitration called final offer selection. Under this procedure, both parties agree to refer all matters remaining in dispute between them to a selector. Each party submits to the selector its final offer on all remaining issues. After reviewing the positions of each party and after holding such hearings as the selector feels necessary, the selector must then select the final offer on all matters remaining in dispute given to the selector by one or other of the parties. In other words, the selector cannot impose a decision which is somewhere in between the positions of the parties nor can he or she combine the final offers of the two parties on the various issues in dispute.

The essential advantage of final offer selection is that it forces the parties to put forward reasonable positions. The usual strategy employed at interest arbitration - submitting a high (or low, depending on your perspective) position to the arbitrator knowing that he or she will award something in between - does not work. An unreasonable position will increase the likelihood that the selector will pick the other part's position. Because the final offer must be viewed globally, the process obviously forces each party to put together a reasonable position on each of the issues in dispute. This requirement will usually have the effect of both decreasing the number of issues in dispute and diminishing significantly the distance between the parties.

Obviously, final offer selection works best in dealing with monetary issues. Issues such as staffing are not as suitable to the process because the respective positions of the parties may require, in order to produce a decision which is reasonable over all, the combination of various aspects of

each party's proposal rather than a selection of one or the other. Where the issues are appropriate to such a dispute resolution mechanism, however, it is a process which can both reduce the unpredictability of arbitration and increase the likelihood of settlement in advance of arbitration.

There will, however, be disputes where final offer selection would not be in a Board's interests. For example, a dispute in an economic and political climate in which a Board finds it very difficult to put forward a proposal which is consistent with prevailing settlement norms would not be the time for final offer selection. This type of situation represents the principal disadvantage to the possibility of final offer selection remaining in the Act. Because of its existence, the Ministry, in deciding to legislate an end to a lengthy strike, would be more likely to impose final offer selection as a dispute resolution mechanism than it would be if the procedure were not contained within the Act.

(Source: Bruce H. Stewart, Hicks Morley Hamilton Stewart Storie, Barristers & Solicitors)

SUMMARY

The following section summarizes the findings of the Bill 100 task force and the questions raised in the document for member board consultation.

SECTION I - Responsibility for Collective Bargaining

Recommended Guiding Principles for the Review of Bill 100

The design of a bargaining system for teachers very much depends on what the bargaining system is expected to achieve, and on which rights and principles it is important to respect and preserve.

Objective

1. **Bargaining should set fair compensation and working conditions for teachers, neither too high nor too low in comparison to other members of the B.C. labour force, and be sensitive to the law of supply and demand of teachers.**

2. **Bargaining should allow other important systems to function properly: systems of learning, financing, taxing, and professional development. Specifically, bargaining should not be asked to achieve, nor subject to interference in pursuit of, the objectives of these other systems.**

Rights and Principles

1. **Students have a right, through their school board representatives, to insist that their learning conditions are not unreasonably affected by collective bargaining.**

2. **People have a right to influence decisions affecting their lives and livelihood. Teachers have a right to collective bargaining.**

3. **Taxpayers, through their school boards, have a right to ensure that settlements are not excessive.**

4. **Dispute resolution for conflict between these rights must be based on a balance in power. It cannot strip employees of meaningful influence, nor strip taxpayers and students of meaningful safeguards.**

5. **Diversity of local circumstances must be accommodated.**

6. **The parties to the bargaining table must be accountable to those who elect them and to those who are affected by, and have to pay for, the bargaining decisions.**

7. **The bargaining process must have integrity. It must not be interfered with, unilaterally set aside or undone, nor allowed to invade unreasonably other functions."**

For the purposes of discussions, you are asked to consider the following question prior to the consideration of the various negotiating models.

1. **Do you agree with the "Guiding Principles"? Why/Why not?**

Committee Recommendation:

That Local Autonomy be retained with Regional Collaboration being utilized by member boards. Joint Regional Negotiation, which is permissive, may be considered where deemed appropriate.

2. **Which model do you believe will most effectively address the "guiding principles" for a negotiating process?**
3. **Provide any additional "advantages" or "disadvantages" to the various negotiating models which your board believes are appropriate.**
4. **Is there an additional model the task force should consider?**

SECTION II - Fact Finding

Committee Recommendation:

That an alternative process to fact finding be established to meet the original intent and increase public awareness of the issues in dispute.

QUESTIONS:

1. **Do you agree/disagree that fact finding continues to assist the parties in reaching a settlement? Why?**

2. **Do you agree/disagree that the elimination of fact finding, with an identified alternative is appropriate? Why?**

3. **Do you agree/disagree that a public fact finding process would assist the parties and the public in its understanding of the issues remaining in dispute and lead towards settlement? Why?**

4. **Are there specific issues which need to be addressed (e.g. timing) if a revised fact finding process is to be effective?**

SECTION III - Strikes and Lock-outs

Committee Recommendation:

That teachers retain the "right to strike" and that compulsory binding arbitration is not a viable option.

QUESTION:

1. **Do you agree/disagree with retaining the "right to strike" provision of Bill 100? Why?**

2. **Should there be any special programs or assignments which should be excluded from the "right to strike" provision. (e.g. Special Education or remedial services)? Why?**

Committee Recommendation

That the Act provide for "balanced rights". Therefore, either Option 2. or 3. may be considered.

That boards should acquire the right to modify the terms of employment on the same basis as the teachers right to strike.

2. **In conjunction with revised timelines, amend Bill 100 to provide for sanctions at a specific date (e.g. September 1). If sanctions are not imposed, the last offer of the board of education shall form the basis of a renewed collective agreement between the parties.**

3. **Amend Bill 100 to provide for boards of education to lock-out and modify terms of employment on the same basis as the branch affiliates right to strike and partial lock-outs in the event of work to rule.**

QUESTIONS:

1. **Do you agree/disagree that the current provisions relating to strikes and lock-outs should be revised? Why?**

2. **Do you agree/disagree with the committee recommendation/option concerning strikes and lock-outs? Why?**

SECTION IV - Principals in the Bargaining Unit

Committee Recommendation:

That options be pursued to address the issue of principals in the bargaining units.

QUESTIONS:

1. **Do you agree that the management function of principals is influenced by a union affiliation?**

2. **What future roles of principals might be influenced by a union affiliation?**

3. **What future direction of boards of education might address the issue of school administration?**

4. **What effect has the expanded certification of members (clerical, teacher assistants, etc.) with the provincial teacher federations had on the role and responsibilities of principals?**

SECTION V - Legislated Time Frame and Process

Committee Recommendation:

In conjunction with other issues identified in this discussion paper (e.g. Sanctions - "balanced rights", and fact finding), the task force has considered the following time frame as a possible alternative to difficulties currently being experienced under Bill 100.

Notice to Bargain	by January 15
Requirement to Meet and Exchange Negotiating Proposals	within 15 days
Mediation Available to the Parties	by April 1
Fact Finding (new format)	available June 1
Last Offer/Strike Vote	by last week of June
Negotiations to continue (if required)	July and August
Option of Sanctions to both parties	September 1

QUESTIONS:

1. **Do you agree/disagree that a revised time frame would assist the parties under the legislation? Why? Why not?**